FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.216 OF 2006

Office notes, office Memoranda of Coram, appearance, Court's orders or directions and Registrar's orders.	Court's or Judge's orders.

Mr.I.M.Koparkar for the Petitioner.
Ms.M.M.Mhatre, APP. for the State.

CORAM : R.S. MOHITE, J.
DATED : FEBRUARY 6, 2006.

P.C.

1. Heard both sides.

2. Rule. By consent, rule made returnable forthwith.

3. This petition impugns an order dated 20.12.2005 passed by the Dy. Superintendent, Yerwada Central Prison, Pune rejecting furlough under (Bombay Furlough and Parole) Rules, 1959. On perusal of the impugned order dated 20.12.2005 it is seen that the furlough has been refused to the petitioner on one single ground i.e. when he was on furlough on the last occasion on 5.1.2002 he had surrendered late by 57

days. It is admitted position before me that though the petitioner surrendered late he was not required to be arrested and that the surrender was voluntary. The petitioner has been punished by reduction of his remission of 114 days. Be that as it may, the full bench of the Gujarat High Court in the case of Bhikhabhai Devshi Vs. State of Gujarat and ors. reported in 1987 Cri.L.J. Page 1932 has held that Rule 4(1) of the Prisons (Bombay Furlough and Parole) Rules, 1959, is directory and not mandatory and if prisoner is released on parole and surrenders late he is not totally ineligible for being released on furlough. In the circumstances, I am inclined to make the rule absolute. It is directed that the petitioner may be released on furlough forthwith for a period of two weeks from the date of his actual release in accordance with rules. In view of this direction, impugned order is quashed and set aside and the rule is made absolute

accordingly. Petition is disposed off.

(R.S. MOHITE, J.)